

MINUTES
BOARD OF ADJUSTMENT
October 4, 2007

THOSE IN ATTENDANCE:

Gary Soule, Chairman	Jason Jaggi, Planner
Anne Martin	Ken Heinz, Acting City Attorney
Victor Cohen	
Mel Disney	
Ray Tait	

Chairman Soule called the meeting to order at 5:00 p.m. He welcomed everyone to the meeting, introduced himself and asked that the other members of the Board introduce themselves.

MINUTES

The minutes of the meeting of September 6, 2007 were presented for approval. The minutes were approved, after having been previously distributed to each member.

Chairman Soule indicated that the members of this Board are appointed by the Mayor and approved by the City's Board of Aldermen and serve without monetary compensation. He indicated that a full compliment of the Board consists of 5 members and that four members must vote in favor of a variance in order for the requested variance to be granted. He stated that the applicant must demonstrate practical hardship with regard to the property in order to justify the granting of a variance. He then advised that this is a duly advertised, duly noted meeting and that the proceedings are of record. He reminded everyone that all testimony is tape-recorded and the minutes produced from this recording. He then asked that all individuals wishing to speak to please speak clearly. He stated that generally, the City will present its exhibits first, after which the applicant will make their presentation, then questions/comments from the Board members will ensue after which audience comments will be solicited and finally, a vote will take place. Chairman Soule indicated that there are two applications on the agenda for this evening, but that the applicant for 838 N. Biltmore had earlier contacted City staff to request that their application be postponed until the November meeting. Chairman Soule then verified that the applicant for 12 Carrswold Drive was in attendance.

APPEAL FROM PETER AND MACON FINLEY FOR THE PROPERTY AT 12 CARRSWOLD DR.

Ms. Elizabeth Panke (project architect) and the owners, Peter and Macon Finley, were in attendance at the meeting.

Anne Martin announced that Mrs. Finley is a colleague of hers and that she could recuse herself from participating in the discussion and vote with regard to this appeal. She stated she has no financial ties to the applicant.

Chairman Soule asked Anne if she could render a fair and impartial decision.

Anne Martin replied “yes”.

Chairman Soule asked the owners if they had any objections to Anne’s participation.

The owners replied “no”.

Chairman Soule asked Mr. Heinz if Anne’s participation could be construed as a conflict of interest.

Mr. Heinz replied “no”.

Chairman Soule asked Jason Jaggi to begin the City’s presentation with regard to the appeal.

Jason Jaggi began a PowerPoint presentation. The first slide depicted the existing conditions of the property. Jason indicated that the 1.3 acre site contains one single family residence, built in 1930. He stated the current structure sits very close to the rear setback and that the owners would like to construct a hearth room that would encroach 10.92-feet into the 50.92-foot rear setback. An aerial image of the property was shown. A slide depicting the City’s zoning map was presented, showing the subject property’s zoning designation of R-1. Jason pointed out that the properties behind the subject site are zoned R-2. Jason indicated he would be happy to answer any questions.

Chairman Soule asked if the City would like to present its Exhibits.

Acting City Attorney Heinz presented the following exhibits with regard to the application. He asked that they be entered into the record on behalf of the City:

- A. City’s Code of Ordinances and Master Plan;
- B. Application for Zoning Review submitted by the applicant;
- C. Zoning Review denial letter;
- D. Application for Appeal;
- E. Drawings submitted by the applicant; and
- F. Staff Report.

Chairman Soule indicated that all Exhibits will be received.

Ms. Panke introduced drawings on poster boards and asked that they be entered into the record.

Chairman Soule indicated that drawings will be marked as Applicant’s Exhibits 1, 2 and 3.

Ms. Panke asked that the Board waive the 25% requirement in favor of the 40-foot minimum rear yard setback. She stated that the house is set back to nearly the rear yard setback already, but that it does provide large front and side yards. She stated the Finley's have owned the home for 11 years and that it is an elegant and formal home with a second floor mezzanine, large living room with 10-foot high ceilings, large dining room and a sunroom that overlooks the swimming pool. She stated that pantry/kitchen is long and narrow and that they have a large garage. She stated the owners feel a lack of family as the family gathers in the kitchen. She stated if they converted the dining room to a hearth room, they would lose the dining room; if they used the other corner or the garage, the room would be too far from the kitchen. Photos depicting the rear and front elevations were shown. Ms. Panke indicated that they are only asking for a one story addition, as additional bedrooms are not needed. She stated the hearth room will be proportionate with the other rooms in the house and won't be very visible once constructed, nor will it interrupt the view from the neighbors in Wydown Forest. She indicated that the addition will be similar to the remainder of the house with plaster and a slate roof, French windows and higher ceilings. She stated the trim will be echoed and the room will have a poured concrete floor; a French door will lead to the back yard. She stated that the house is missing a critical element (hearth room) and that the Finley's would like to stay here and enjoy many more years in this home, but need an informal gathering area. Ms. Panke presented a letter from the rear yard neighbors (328 Edgewood-Goss) indicating that they have no objection to the proposed addition.

Chairman Soule asked that the letter be marked as Applicant's Exhibit 4. He asked Acting City Attorney Heinz and Planner Jason Jaggi if they had anything to add at this time.

Ken Heinz and Jason Jaggi replied "no".

Chairman Soule asked if there is limited availability for a rear addition since the existing structure sits far back on the lot.

Jason Jaggi replied "yes".

Chairman Soule asked if by granting this variance, the 40-foot minimum rear setback would be observed.

Jason Jaggi replied "yes". He stated the rear yard setback requirements are a minimum of 40-feet or 25% of the depth of the lot, whichever is greater.

Chairman Soule asked if, in staff's opinion, there would be any adverse impacts if the variance is granted.

Jason Jaggi replied "no". He stated the proposed addition is one story with a low, flat roof.

Chairman Soule asked, if, in staff's opinion, the applicant has considered alternatives.

Jason Jaggi replied “yes”. He indicated that hearth rooms are a popular feature of new construction.

Anne Martin commented that she is not confident that necessity falls under the definition of hardship, but appreciates the fact that other alternatives were considered and that by observing the 40-foot minimum setback, she believes that the spirit of the Zoning Ordinance is being observed.

Being no further questions or comments, Chairman Soule moved to approve a variance from Section 14.8.2 of the Zoning Ordinance to allow a 10.92-foot encroachment into the 50.92-foot rear yard setback for the construction of the proposed addition. The motion was seconded by Ray Tait and received unanimous approval of the Board.

Chairman Soule advised the applicant that the variance is granted.

Being no further business for the Board of Adjustment, this meeting adjourned at 5:35 p.m.

Recording Secretary